



Original: English

No.: ICC-02/05-01/09

Date: 22 June 2010

**PRE-TRIAL CHAMBER I**

**Before: Judge Sanji Mmasenono Monageng, Single Judge**

**SITUATION IN DARFUR, SUDAN**

***IN THE CASE OF  
PROSECUTOR v. OMAR HASSAN AHMAD AL BASHIR***

**Public Document**

**Request to file additional information before the Single Judge in light of the  
Prosecution's Observations on Applications for Victim Participation**

**Source: Applicants, represented by Sir Geoffrey Nice QC and Rodney Dixon**

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

**The Office of the Prosecutor**

Luis Moreno-Ocampo

**Counsel for the Defence**

Ms Michelyne C. St-Laurent

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

Sir Geoffrey Nice QC

Rodney Dixon

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the  
Defence**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

Ms Fiona McKay

**Other**

**A. Request to file additional information**

1. The Victim Applicants a/0774/10-a/0781/10 hereby request pursuant to Regulation 86(7) to be permitted to file additional information through the Registry, if necessary, on two important issues raised for the first time in the Prosecution's Observations, dated 18 June 2010:
  - (i) The conflict of interest alleged by the Prosecutor to exist because Counsel for the Victim Applicants also act on behalf of SWTUF and SIDG in proceedings in the same case, SWTUF and SIDG being the organisations that assisted the Victim Applicants prepare their applications. This is an issue that directly concerns the *standing* of the Applicants' Counsel who, on their own account as well as on behalf of their clients, should have an opportunity to provide further information on this subject; and,
  - (ii) The Prosecutor's assertion that the Victim Applicants are required to identify the suspect charged as being responsible for the harm they suffered in order to be recognised as victims, something that the Prosecutor maintains all the Victim Applicants have failed to do in their applications. This is a fundamental point that goes to the heart of the Victim Applications, about which the Single Judge may wish to receive further information from the Applicant Victims themselves, through their Counsel or otherwise.
2. The Victim Applicants make this request conscious of the Single Judge's ruling that the Regulations do not permit victim applicants to file a response to any document as they are not yet considered victims with procedural rights and are not yet entitled to participate in the proceedings.<sup>1</sup>
3. The Victim Applicants do not seek a re-consideration of this legal ruling. Their current request is instead based on Regulation 86(7) which provides that:

“Before deciding on an application, the Chamber may request, if necessary with the assistance of the Registrar, additional information from, inter alia, States, the Prosecutor, the victims or those acting on their behalf or with their

<sup>1</sup> ICC-02/05-02/09-140, 7 October 2009.



consent. If information is received from States or the Prosecutor, the Chamber shall provide the relevant victim or victims with an opportunity to respond.”

4. By this Regulation the Chamber is authorised to receive additional information from victim applicants themselves, with the assistance of the Registry (VPRS) if necessary, before deciding on their victim applications and before they have any procedural rights to participate as victims. The term “additional information” is left undefined in this Regulation, and it is the submission of the Victim Applicants that it must include the further information that they seek to make available to the Single Judge, namely, further factual information from the Victim Applicants and their Counsel together with related and relevant representations.
5. There is no restriction placed in the Regulation on the type of “information” that could be requested and received by the Chamber. Furthermore, the additional information envisaged by this Regulation must logically include any information which is relevant to the materials listed in Regulation 86(2) that are required to be filed with any victim application. The information that the Victim Applicants now seek to add falls within and is related to these categories of information.
6. In particular, Regulation 86(2) stipulates that victim applicants must, *inter alia*, provide the following information:
  - (i) “A description of the harm suffered resulting from the commission of any crime within the jurisdiction of the Court” (Regulation 86(2)(c));
  - (ii) “A description of the incident, including its location and the date, *to the extent possible*, the identity of the person or persons the victim believes to be responsible for the harm as described in Rule 85” (Regulation 86(2)(d) [emphasis added]); and,
  - (iii) “Information on the extent of legal representation, if any, which is envisaged by the victim, including the names and addresses of potential legal representatives, and information on the victim’s or victims’ financial means to pay for a legal representative”.
7. In order to decide the present victim applications, the Victim Applicants submit that it is necessary for the Single Judge to receive additional information from the Victim

Applicants on the two issues outlined above, and any other issues about which the Single Judge requires further information. Regulation 86(7) provides a clear procedure for so doing, and the Single Judge is invited to permit this information to be filed in accordance with this Regulation, and through the Registry (VPRS) if necessary.

8. The intention of this Regulation must be to provide the Single Judge with the discretion to obtain all additional necessary information to be able to adjudicate upon victim applications with all relevant materials before the court.
9. It should be noted that Regulation 86(4) also permits the Registrar to request further information from victim applicants to ensure that the applications contain, to the extent possible, the information referred to in Regulation 86(2), cited in part above.
10. The import of these provisions is to ensure that the court has available all relevant information, understood in its widest sense, when deciding on victim applications, accepting that information supplied by victim applicants with their original applications can be supplemented, if necessary, with additional information to address the categories of information required by Regulation 86(2).
11. The Victim Applicants submit that there is no good reason for the additional information to be refused under these provisions, especially as it is relevant to the decision about whether to grant the present applications in whole or in part. No prejudice will result to the Prosecutor or *ad hoc* Defence Counsel, who should have an opportunity to respond to such additional information.



**B. Reasons for submitting the additional information**

12. In the Victim Applicants' submission, the Single Judge could be greatly assisted by additional information from the Victim Applicants in respect of the two issues set out above.
13. On the *first issue of the alleged conflict of interest*, as the Single Judge will be aware, Counsel for the Victim Applicants have been open and frank from the outset about who they represent and the applications they make. There is no conflict of interest in the present case as Counsel are instructed that none of the Victim Applicants seeks a warrant for genocide charges to be issued, even assuming it to be within the ambit of the rights of victims before the ICC to apply for such warrants to be issued, or to comment at all on issues of an essentially legal nature. The Victim Applicants are fully aware of the applications being made on behalf of SWTUF and SIDG in the present case, which they support, and they have consented to being represented by Counsel for SWTUF and SIDG. These are matters about which additional information can be provided to the Single Judge by the Victim Applicants and Counsel so that matters of standing and legal representation are not a bar to victim participation in this case.
14. On the *second issue of the naming the suspect*, the Victim Applicants similarly request that they are permitted to file additional information relevant to this matter so that it is before the Single Judge before any ruling is made.
15. The Victim Applicants would ask that the Single Judge when considering this request take into account that the Victim Applicants have already stated in their applications what happened to them. They have identified the perpetrators in each case, to the extent that they are able to, from what they witnessed (as provided for in Regulation 86(2)(d), cited above). Their statements, as they should be, are confined to direct evidence of the crimes they witnessed were committed against them and of the persons involved. Based on this evidence there can be no doubt that the incidents and crimes which caused them harm and suffering are charged as crimes by the Prosecutor – the dates, locations and many of the particulars described by the Victim Applicants match those set out in the Prosecutor's charges against President Al Bashir. The Victim

Applicants thus plainly fulfil the criteria of Article 68(3) and Rule 85 in that there is a direct link between the harm they have suffered in each of their villages and the particular crimes charged by the Prosecutor in each of these same villages.

16. It cannot be right that the Victim Applicants are only entitled to participate as victims providing that they identify the particular person charged by the Prosecutor as *the* perpetrator, especially when they are ordinary villagers from Darfur with no knowledge of who may have been responsible in chains of command far removed from their experiences.
17. There is no provision in the Statute, Rules or Regulations which requires that victims must be able to identify the particular perpetrator as charged by the Prosecutor in order to participate as victims, and no Chamber at the ICC has ruled that there is such a requirement. Indeed, there are many victim participants in cases before the ICC who do not know the identity of the perpetrator or do not have first-hand information about the perpetrator, especially those perpetrators in command positions. Such victim participants would be speculating if they were to offer an opinion about who was responsible.
18. There is similarly no provision in the Statute, Rules or Regulations that dictates that only victims who agree with every aspect of the Prosecutor's case are allowed to participate – such an approach would undermine the entire purpose of the right of victim participation before the ICC as parties independent of the Prosecutor.
19. Moreover, it cannot be right that the Victim Applicants are required to characterise the crimes they have suffered as a matter of law as being, for instance, “genocide”, or “a criminal policy directed at the civilian population”, or “collateral damage that was disproportionate so as to amount to an unlawful attack”, in order to qualify as victims. These are matters for determination by judges in subsequent proceedings and would have to be decided on all of the evidence presented and on the basis of legal submissions.
20. The Victim Applicants in the present case request to be given an opportunity to provide additional information about each of these issues in the form of further

statements from the Applicants, if necessary, together with representations on their behalf by their Counsel.

**C. Conclusion**

21. For all of these reasons, the Victim Applicants respectfully request that they are allowed to file additional information on the issues defined above and any other issues which could be of assistance to the Single Judge pursuant to Regulation 86(7).



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For Sir Geoffrey Nice QC  
Rodney Dixon  
Counsel on behalf of the Applicants

Dated this 22<sup>nd</sup> day of June 2010  
London, United Kingdom